



महाराष्ट्र शासन राजपत्र

असाधारण भाग चार-क

वर्ष ४, अंक ६८(३)]

सोमवार, नोवेंबर २६, २०१८/अग्रहायण ५, शके १९४०

[पृष्ठे ६, किंमत : रुपये ९.००

असाधारण क्रमांक १०३

प्राधिकृत प्रकाशन

महाराष्ट्र शासनाव्यतिरिक्त इतर वैधानिक प्राधिकान्यांनी तयार केलेले

(भाग एक, एक-अ व एक-ल यांमध्ये प्रसिद्ध केलेले वैधानिक नियम व आदेश यांव्यतिरिक्त इतर)

वैधानिक नियम व आदेश ; यात भारत सरकार, उच्च न्यायालय, पोलीस आयुक्त, आयुक्त (राज्य उत्पादन शुल्क), जिल्हादंडाधिकारी व निवडणूक आयोग, निवडणूक न्यायाधिकरण, निवडणूक निर्णय अधिकारी व निवडणूक आयोगाखालील इतर प्राधिकारी यांनी तयार केलेले वैधानिक नियम व आदेश यांचा समावेश होतो.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY ORDINARY ORIGINAL CIVIL JURISDICTION

APPLICATION No. 22 OF 2015

IN

ELECTION PETITION No. 29 OF 2014

Shri Narendra Lalchandji Mehta

...

Applicant

(Original Respondent No. 1)

In the matter between :—

Shri Gilbert John Mendonca

...

Opponent

(Original Petitioner)

Versus

- (1) Shri Narendra Lalchandji Mehta
- (2) Shri Yakub Ismail Qureshi
- (3) Shri Prabhakar Padmakar Mhatre
- (4) Shri Islam Vakil Ahmed Sheikh
- (5) Shri Rajan Popat Bhosale
- (6) Shri Azad Kishanbhai Patel
- (7) Shri Rajiv Jatin Doshi
- (8) Shri Shivkumar Sureshchandra Jain
- (9) The State of Maharashtra

... } *Respondents.*

Mr. S. M. Gorwadkar, Senior Advocate with Mr. S. D. Patil, A. A. Singh,
 C.Y. Shah *i/b* Sanjay Gawade for Applicant
 (Original Respondent No. 1.)

Mr. D. Vyas with Mr. Durgesh Kulkarni *i/b* Lex Firmus for Opponent
 (Original Petitioner in Election Petition).

CORAM : A. S. GADKARI, J.

Reserved on : 18th JULY 2017.

Pronounced on : 9th FEBRUARY 2018.

JUDGMENT

1. This is an application by the original respondent No. 1 under Order VII Rule 11 of the Code of Civil Procedure, 1908 (CPC) for rejection of Election Petition preferred by the opponent (original petitioner) for violation of Sections 81 and 83 of the Representation of the People Act, 1950 and for its dismissal under section 86 of the said Act.

2. Heard Mr. S.M. Gorwadkar, the learned Senior Counsel for the applicant (Original Respondent No. 1.) and Mr. Vyas, the learned Counsel for the Opponent (Original Petitioner). Perused the record annexed to the present application and of the Election Petition.

3. The opponent (original petitioner) contested the election from Maharashtra State Legislative Assembly Constituency No. 145 for Mira-Bhayandar Assembly Constituency. That the said elections were held on 15th October 2014 and its results were declared on 19th October 2014. The applicant herein was declared as an elected candidate from the Mira-Bhayandar Constituency.

4. The opponent (original petitioner) thereafter filed the present Election Petition challenging the election of the applicant on 2nd December 2014. The applicant thereafter filed the present application under Order VII Rule 11 of the Code of Civil Procedure, 1908 and under sections 81 and 83 read with Section 86 of the Representation of the People Act, 1950 (the Act) for its dismissal on 8th September 2015. The opponent (original petitioner) filed an affidavit-in-reply dated 22nd October 2015 to the present application.

5. During the course of arguments of the present application, the applicant had filed an application No. 4 of 2016 for amendment of the present application *i.e.* Application No. 22 of 2015 and the same was allowed by an Order dated 6th October 2016. The applicant thereafter incorporated an additional ground No. 6 (a)-(1). The opponent (original- petitioner) filed an additional affidavit-in-reply dated 8th December 2016 to the amended ground on 24th December 2016.

6. The present application is filed mainly on the grounds *viz.* breach of the mandatory provisions of the Representation of People Act ; non-disclosure of any cause of action on account of absence of documentary evidence as the exhibits cannot be read due to defective verification and the absence of even a semblance of any triable issue due to the invalidity of the exhibits. It is further contended in the application that, the present Election Petition is fraught with omissions of a vital nature in a misguided attempt to sustain a wholly misconceived challenge to a sacrosanct electoral process conducted in accordance with law.

7. The opponent (original petitioner) has filed the affidavit-in-reply and additional affidavit-in-reply as noted hereinabove. The reply of the opponent (original petitioner) proceeds on general denials and specific denials. It further appears that, the opponent has given certain admissions which are vital in nature.

8. Mr. S. M. Gorwadkar, the Learned Senior Counsel appearing for the applicant submitted that, the applicant (Original Respondent No. 1.) has filed the present application for the limited purpose of rejection of the Election Petition at the threshold for non-compliance of the mandatory provisions of the

Representation of the People Act, 1950 which renders the petition not maintainable and liable to be dismissed with cost. That for the same reason the petition has become devoid of cause of action and devoid of essential basis for its maintenance.

He submitted that, the elections were held on 15.10.2014 and its results were declared on 19.10.2014. That the limitation of 45 days to file the petition would have been come to an end on 3.12.2014. That the petition was presented on 2.12.2014, however, on that date i.e. on 2.12.2014, the petition was full of objections and was not in accordance with law. That the petitioner removed office objections on 24.12.2014, as it is apparent from the endorsement put up by the Office of the Prothonotary. He therefore submitted that, the petition as presented on 44th day i.e. on 2.12.2014 was not a complete petition in all respects as on the last date of limitation and therefore the petition is liable to be rejected on this ground.

In addition to his submission with respect to incomplete presentation of the petition on 2.12.2014, he submitted that, the present petition is further vitiated by non-compliance of mandatory provisions of Section 81(1) of the Representation of People Act, 1950 as the pages of the petition are not signed by the petitioner as per necessary mandate of law. That the hand made corrections in the petition are neither initialed nor attested by the petitioner. That the exhibits annexed to the petition bear no signatures of the petitioner nor they do bear endorsement 'True Copy' by the petitioner and/or Advocate declaring their authority and therefore in view of the mandate of law incomplete petition is filed by the petitioner.

He submitted that, in pursuance of Order dated 6.10.2016, the applicant has incorporated an amended ground i.e. No. 6 (a)-(1). That the petition was presented by Advocate Shri Durgesh Kulkarni and not by the petitioner in person, as it is evident from the noting of the office of this Court and therefore the presentation of the petition was not valid presentation as contemplated under Section 81(1) of the Representation of People Act, 1950 and therefore the petition deserves to be dismissed on this ground alone.

He further submitted that, the copy of the petition served upon the applicant (Original Respondent No. 1) falls foul of the provisions of the Act, insofar as the said copy has not been attested by the opponent (original-petitioner) under his own signature to be a 'True Copy' of the petition and therefore this is a clear violation of Section 81(3) of the Representation of People Act, 1950.

He further submitted that the petitioner has failed to serve copies of the Election Petition, complete in all respects, on the respondent (applicant herein) and it is a fatal defect in complying with the mandatory requirements under the provisions of the said Act.

In support of his aforeslated contentions, he has placed reliance on the following decisions :

- (1) Krishan Chander Vs. Ram Lal
MANU/SC/0248/1973 : (1973) 2 SCC 759 ;
- (2) Ashok Tapiram Patil @ A.T. Nana Patil Vs. Gurumukh Mehrumal Jagwani & Ors.
2006 (6) Bom. C.R. 832 ;
- (3) Satya Narain Vs. Dhuja Ram & Ors.
(1974) 4 SCC 237 ;
- (4) Jagannath Shindu Rahane Vs. Manisha Manohar Nimkar
1996 (5) Bom. C.R. 451 ;
- (5) Hukmdevi Narain Yadav Vs. Lalit Narain Mishra (1974) 2 SCC 133 ;
- (6) Lachhman Das Arora Vs. Ganeshi Lal & Ors. MANU/SC/0539/1999 : (1999) 8 SCC 532 ;
- (7) Gopal Prasad Shastri Vs. Archana Kumar 1983 SCC OnLine Del 230 : AIR 1984 Del 280 ;
- (8) G.V. Shreerama Reddy & Anr. Vs. Returning Officer & Ors.
(2009) 8 SCC 736 ;

He therefore prayed that, in view of the fatal defects in presenting the petition, the present petition may be rejected under Order VII Rule 11 of the Code of Civil Procedure, 1908 read with section 86 of the Representation of People Act, 1950.

9. Shri Vyas, the learned Counsel appearing for the opponent (original-petitioner) submitted that, the petitioner has filed the petition within the period of limitation and has removed the objections raised by the Office of the High Court on 24.12.2014. He submitted that, assuming for the sake of argument that, there were certain objections at the time of filing of the petition and that there might have been defects in the Election Petition, the same are not fatal. According to him, what needs to be seen and countenanced by the Court is that, whether those defects are of such nature that they are fatal to the petition. That the objections raised by the Office of the High Court are not objections as contemplated under the Representation of People Act, 1950 and therefore cannot be considered to be complied with at the time of presentation of the Election Petition.

He submitted that, such objections which are under the procedural law of the High Court, can be complied with subsequent to filing of petition. That the objections which have been removed or complied with by the petitioner on 24.12.2014 were merely departmental objections raised under the Bombay High Court Original Side Rules, 1980 and therefore the contention of the petitioner that complete Election Petition was filed beyond prescribed period of limitation, has no substance in it. He further submitted that, an Election Petition can be dismissed at its threshold under section 86 of the said Act, if there are possible defects only under section 81, 82 or 117 of the said Act and not otherwise. That, if the defects are not as contemplated under Sections 81, 82 and 117 of the said Act, there cannot be rejection at the threshold. He submitted that the objections raised under the Bombay High Original Side Rules are therefore not fatal to the present Election Petition.

He further submitted that, the petitioner denies that the hand- made corrections made in the petition were not either initialed or signed by the petitioner. However, there is no such requirement as contemplated under the provisions of the said Act and as alleged otherwise. He submitted that, in the affidavit-in-support of the petition some inadvertent blank spaces remained, however, the same is curable defect and cannot entail rejection of the petition. He submitted that the blank spaces are subsequently filled in by the petitioner and it is merely descriptive changes and the same have been verified and signed by the Advocate on record and therefore is curable defect and not fatal for presenting the petition. He *inter alia* submitted that the High Court Original Side Rules have no application to an Election Petition filed under the provisions of Representation of People Act, 1950.

He submitted that a 'True Copy' of the petition has been subsequently supplied to the applicant prior to commencement of hearing of the present application and therefore the objection of the applicant that, a 'True Copy' as contemplated under Section 81(3) of the said Act, has not complied with, has no substance in it. He further submitted that, the petitioner subsequently remained present for verification of the amendments/amended copy of the petition and therefore the defect as contemplated under Section 81(1) of the said Act is cured. He submitted that, re-verification relates back to the date of verification i.e. the date of presentation of the petition. He further submitted that, the decision in the case of Ashok Tapiram Patil @ A.T. Nana Patil Vs. Gurumukh Mehrumal Jagwani & Ors. (supra), has been overruled by the decision of the Supreme Court in the case of Ponnala Lakshmaiah Vs. Kmmuri Pratap Reddy & Ors. (supra).

He further submitted that, the decision in the case of Satya Narain Vs. Dhuja Ram & Ors. (supra) is held to be no-more good law by a larger Bench of the Supreme Court in the case of Chandrakant Uttam Chodankar Vs. Dayanand Rayu Mandrakar and Ors. reported in (2005) 2 SCC 188.

In support of the aforestated contentions, the learned Counsel for the opponent (original-petitioner) relied on the following decisions :—

- (1) Haribhau Madhav Jayle Vs. Ramesh Vithal Choudhari & Ors.
(2002) 10 SCC 102 ;

- (2) Sardar Harcharan Singh Brar Vs. Sukh Darshan Singh 2004 DGLS (SC) 1004 : AIR 2005 SC 22 ;
- (3) Umesh Challiyil Vs. K.P. Rajendran 2008 DGLS (SC) 309 : AIR 2008 (SC) 1577 ;
- (4) G.M. Siddeshwar Vs. Prasanna Kumar 2013 DGLS (Soft) 203 : AIR 2013 (SC) 1549 ;
- (5) Anil R. Deshmukh Vs. Onkar N. Wagh 1999 DGLS (SC) 53 : AIR 1999 (SC) 732 ;
- (6) Chandrakant Uttam Chodankar Vs. Dayanand Rayu Mandrakar & Ors (2005) 2 SC 188 : AIR 2005 (SC) 547.
- (7) Ponnala Lakshmaiah Vs. Kommuri Pratap Reddy & Ors 2012 DGLS (SC) 323 : AIR 2012 (SC) 2638 ;

He therefore prayed that the present application therefore be rejected.

10. It is to be noted here that, the learned Counsel appearing for the opponent (original-petitioner) however could not escape from vital admission given by the opponent in the affidavit-in-reply dated 14.12.2016 to the amended application about the fact that, the petitioner was not present at the time of presenting the Election Petition.

11. The Supreme Court in the case of G.V. Sreerama Reddy And Anr. Vs. Returning Officer And Others reported in (2009) 8 SCC 736 in paragraph Nos.14, 19, 24 and 25 has held as under :—

“14. A close look of Section 81 reveals that the two remaining sub-sections after the amendment introduced by Act 47 of 1966, i.e. (1) and (3) deal with two distinct, but inter-related issues. sub-section (1) deals with the necessary requirements of any petition challenging an election, and sub-section (3) deals with additional requirements as to the petition presented. sub-section (1) has five components :—

- (i) the qualification of the petitioner, i.e. he/she must be either "a candidate at such election" or an "elector";
- (ii) the petition must be presented 'by' the petitioner;
- (iii) the petition must be based "on one or more of the grounds specified in sub-section (1) of Section 100 and Section 101;
- (iv) it must be presented in the High Court; and
- (v) it must be presented within 45 days from, but not earlier than the date of election of the returned candidate, or if there are more than one returned candidate at the election and dates of their election are different, the later of those two dates.

Therefore, all these five requirements are extremely specific and clear. This inference is further strengthened by Section 86(1) which provides that the "High Court shall dismiss an election petition which does not comply with the provisions of Section 81".

19. One can discern the reason why the petition is required to be presented by the petitioner personally. An election petition is a serious matter with a variety of consequences. Since such a petition may lead to the vitiation of a democratic process, any procedure provided by an election statute must be read strictly. Therefore, the Legislature has provided that the petition must be presented "by" the petitioner himself, so that at the time of presentation, the High Court may make preliminary verification which ensure that the petition is neither frivolous nor vexatious.

24. The challenge to an election is a serious matter. The object of presenting an election petition by a candidate or elector is to ensure genuineness and to curtail vexatious litigations. If we consider sub-section (1) along with the other provisions in Chapter II and III, the object and intent of the Legislature is that this provision i.e. Section 81(1) is to be strictly adhered to and complied with.

25. We further hold that as per sub-section (1) of Section 81, election petition is to be presented by any candidate or elector relating to the election personally to the authorized officer of the High Court and failure to adhere such course would be contrary to the said provision and in that event the election petition is liable to be dismissed on the ground of improper presentation."

12. After taking into consideration the above noted submissions advanced by the learned Counsel appearing for respective parties and after perusing the record, two vital facts appear from record namely, (i) the Election Petition was presented on 2.12.2014, by Advocate Shri Durgesh Kulkarni for the petitioner and the petitioner himself was not present at the time of its presentation and (ii) the alleged true copy served upon the applicant by the original-petitioner was not attested by the petitioner under his own signature to be a true copy of the petition.

The note put by the Master and Assistant Prothonotary (Judicial) an Officer duly designated by the High Court Administration and who has accepted the Election Petition for its lodgment on 2.12.2014 mentions as under :—

"The Ld. Advocate Mr. Durgesh Kulkarni i/b Lex Firmus present. He presents one original and twenty four white copies of the petition.

S.O. Centralised Filing/Board Department to accept the Petition for lodging.

C.S. Department to accept a sum of Rs. 2000 towards process fee after the petition is lodged.

The Ld. Advocate for the Petitioner undertakes to remove the office objections during the Course of the day."

As far as the presentation of the petition by the petitioner, as contemplated under Section 81(1) of the Representation of the People Act, 1950 (for short "Act") is concerned, the opponent to in para-4 of his affidavit-in-reply to the amended ground No. 6 (a)-(1) has categorically admitted the fact that, the Election Petition was presented by his Advocate acting in furtherance on his instructions.

13. This Court has personally verified the alleged true copy served upon the applicant herein by the original petitioner after filing the present petitioner and it was found and noted that, the said copy is signed by the Advocate for the petitioner only as 'True Copy' and not by the petitioner himself under his own signature to be a true copy of the petition.

14. Thus it is clear from the record that, the opponent (original- petitioner) has presented the present petition in utter violation of Section 81(1) and (3) of the Representation of the People Act, 1950 and therefore the present application preferred by the present applicant (original- respondent No. 1) needs to be allowed and the Election Petition filed by the opponent (original Petitioner) needs to be rejected under Order VII Rule 11 of the Code of Civil Procedure r/w Section 86 of the Representation of the People Act, 1950.

Hence the following Order :—

- (i) Application No. 22 of 2015 in Election Petition No. 29 of 2014 filed by the Original Respondent No. 1 is allowed.
- (ii) Election Petition No. 29 of 2014 filed by the Original Petitioner is rejected under Order VII Rule 11 of the Code of Civil Procedure r/w Section 86 of the Representation of the People Act, 1950.

A. S. GADKARI, J.

क्रमांक ईपिटी-२०१८/प्र. क्र. ७९६/१८/३३,
सामान्य प्रशासन विभाग
मादाम कामा मार्ग, हुतात्मा राजगुरु चौक,
मंत्रालय विस्तार, मुंबई ४०० ०३२,
दिनांक २० नोव्हेंबर २०१८.

प्रत माहिती व आवश्यक कार्यवाहीस्तव अग्रेषित.—

- (१) जिल्हाधिकारी व जिल्हा निवडणूक अधिकारी, ठाणे.
- (२) निवडणूक निर्णय अधिकारी, मिरा-भाईदर, ठाणे.
- (३) उप जिल्हाधिकारी व उप निवडणूक अधिकारी, ठाणे.
- (४) निवडनस्ती.

शिरीष मोहोड़,
अवर सचिव व उप मुख्य निवडणूक अधिकारी,
महाराष्ट्र शासन.